

## Wetlands Task Force Meeting Notes

The Wetlands Task Force meeting started at 8:30 on March 2, 2000. The minutes from the February meeting were reviewed and Director Reitsma requested that any comments to the meeting notes be forwarded to Tom Getz.

Peter August of URI gave a presentation on GIS tools that are available for environmental planning. The tools he presented would be helpful to smaller conservation organizations. It is capable of providing them with a way to objectively evaluate the conservation value of potential properties they might acquire. In many cases these organizations do not have the technical or ecological background to identify critical regions for protection. URI has been working for three years in the development of a simple analytical protocol that identifies the most important lands for conservation efforts.

He thought this was a good planning tool to help communities determine areas of future growth. He demonstrated the kinds of environmental databases that are available to create a critical resource composite of Charlestown, Rhode Island. The primary resource themes of the critical lands analysis includes information on Farmland Resources; Critical, Recreational and Aesthetic Resources; Biodiversity Resources and Groundwater Resources. Peter indicated information on this topic could be found on the following web site:

<http://www.edc.uri.edu/criticallands/>

It was Peter's opinion that the analysis was usable on a parcel basis and was valuable for planning purposes. He expressed some reservations about the maps being used as legal basis for a regulatory program.

### Working Group Reports

#### Statutory Working Group

Sean Coffey presented the issues discussed at this working group meeting and included the following:

##### A. Permit Length

There were past efforts through the Governor's Commission to modify the Wetlands Act that had consensus but the legislation did not pass. DEM should look for ways to make program changes through regulatory mechanisms instead of changing the statute, such as: Eliminate any time limit for permits in the Act, but let the Director set this by regulation. Allow DEM to issue draft permits for major projects that would expire in two years. This would allow developers to get the necessary local approvals and would allow municipalities to include permit conditions they feel are necessary to meet local

environmental concerns.

A short time limit would not work for DOT projects or major land development projects that are built in phases. It was suggested that applicants of these kinds of projects would have to justify the need for a permit with a longer expiration limit in the beginning of the process. The Director should be able to approve a longer time period, if justified, using criteria specified in the regulations.

#### B. Declaration of Intent in the Act

Strengthen the Wetlands Act to include a statement that indicates it is state policy to have “no net loss of wetlands.” The group felt this could only be accomplished through legislation. The group was split on whether this could be done this year.

DEM should make an effort to revise its regulations, show success with administering these changes and then request legislative changes next year.

The view was also expressed that specific legislative changes on narrow issues might be successful if the changes had the consensus of this group.

#### C. The Definition of Jurisdictional Area

The 1999 legislation expanded the regulated area over the current definitions and this was problematical to some people.

The group discussed the CRMC concept as a useful model and some thought DEM should consider changing the terminology to regulate wetlands using the buffer zone and setback concepts within the 50’, 100’ and 200’ areas.

The wetland definition should be simplified and DEM should use a more scientific definition of wetlands; the 50’, 100’ and 200’ area should be treated as uplands.

In practice, DEM does consider the value of a wetland in the regulatory process and the 50’, 100’ and 200’ areas are regulated as buffer zones now. This policy is not clearly noted and should be formalized.

Performance standards and guidance should be developed to clarify the regulations.

Clarification of the regulations would be welcomed by the Legislature.

Revisions to the state regulations should be consistent with EPA’s regulations.

If DEM used a CRMC approach and defined buffer and setback within the 50’, 100’ and 200’ areas, then the regulations might need a variance process.

Concerns were raised that it might be difficult to develop performance standards for the wetlands regulations.

The legislature might look favorably on the expansion of the 50-foot perimeter wetland, if the department developed performance standards and additional program guidance.

These steps may lead to greater predictability of the regulatory process.

#### CRMC / DEM / FEMA Consistency

Dave Reis of CRMC updated the Task Force on the working group meeting. The following issues were discussed:

#### Jurisdictional Areas and Terminology

The establishment of buffer and setback requirements through DEM freshwater wetland application reviews was discussed. The intent would be to make such terminology and requirements consistent with CRMC practice and rules.

CRMC did not use the DEM definition of freshwater wetlands in their regulatory program and used area of land within 50 feet, and riverbank instead of the word perimeter or riverbank wetlands. In practice CRMC regulates a 200-foot jurisdictional area from coastal features. Buffer and setback areas would be established within DEM's perimeter wetlands and riverbanks and would be measured landward from the wetlands edge. It was noted that it might be possible to institute this practice without statutory changes to the Freshwater Wetlands Act. CRMC uses setbacks to allow for fire fighting equipment access, house maintenance and minimization of insect problems.

The coastal model may not work in the freshwater wetlands scenario because CRMC has a 200-foot jurisdictional area and freshwater wetlands only has a 50-foot perimeter wetland. There should be a presumption of no activity in the 50-foot perimeter wetland. The Freshwater Wetlands Act is not exclusionary and does allow activity controlled by the permitting process, in the 50-foot perimeter wetland.

An alternative is to regulate the area as a 50-foot "buffer zone" and require applicants go through a variance procedure, if they need to work in this area.

A variance procedure would put a high level of scrutiny on the developer of the land.

It could be argued that a 100-foot buffer zone on wetlands is not an expansion of jurisdiction, if there is an open-ended boundary now.

An existing fact sheet describing differences in DEM and CRMC wetland programs will be evaluated to see if there were areas where consistency could be improved (absent the need for statutory changes).

DEM and CRMC have similar procedures for allowing for pre-application and post-application meetings with agency staff. This approach should be encouraged.

Both agencies should investigate certifying "professional wetland flaggers" to alleviate the need for agency verification.

Both agencies were encouraged to utilize personal contact (i.e., phone calls) to obtain information as opposed to deficiency letters.

The Providence Foundation discussed concerns regarding cases where there is both CRMC and DEM jurisdiction. The Providence Foundation would prefer to go through only one permitting agency for Downtown revitalization projects. Moving the CRMC jurisdiction line for tidal waters to the Point Street Bridge to be consistent with the wetlands jurisdiction line will be investigated by CRMC.

Permit review time limits should be established for formal applications.

### Watersheds Working Group

Due to time constraints, Chris Mason gave a brief description of the last meeting. He passed out meeting notes and solicited comments. He indicated that the next meeting would be March 15, 2000 at DEM on the 4th floor. The following points were made during this segment of the meeting:

We need to think carefully about presumptive buffer zone designations. The watershed

evaluations could require or allow for greater or less protection depending on the specific circumstances of the area. Scientific analysis should be the basis of setting buffer zones and there should be a justification presented to the department if a different buffer zone is needed.

The other view mentioned was that we should be moving towards a statewide buffer. The group will consider how to incorporate wetlands issues into the watershed approach for better wetlands protection.

### Beneficial Projects / Exemptions Working Group

Russ Chateaufneuf went over the outputs of this working group. The following points were raised:

DEM currently receives a number of inquiries from the public and the regulated community requesting DEM's opinion on projects that may be exempt from the regulations. Presently, DEM can only respond to these questions if an official application is presented. It was the sense of some on this working group that a new review process should be developed for questionably exempt projects. In the proposed regulatory framework, the applicant would certify that the activity was an exempt activity. The voluntary self-certification would be simple and DEM would provide the public with a quick decision. The advantage of this approach is that DEM would be able to track these exempt activities. Presently, the public is making this decision without DEM oversight. Concern was raised on DEM's ability to process and enforce these exemption certifications. It was also mentioned that people could be using the exemption process to incrementally modify wetlands.

There was some confusion on what constituted a beneficial project. The working group was tasked to define the scope of beneficial projects.

The group was also tasked to develop the framework of the new exemption process.

This working group consists of governmental and non-governmental entities. Additional members of the regulated community were asked to participate on this working group.

### Regulatory Framework Discussion

DEM has begun to initiate regulatory changes that were identified in the draft Wetlands Report. Some changes did not require additional study and will be included in the next (short-term) round of regulation updates. Additional changes identified by the Task Force or working groups that do not require major staff research, may be included in the short-term updates. Based on the complexity of the issue, some changes will be included in the regulation updates that are scheduled for the end of the year. Each working group should develop recommendations on policy or administrative issues and specific regulatory language on any proposal that is being forwarded to the full Task Force for review.

A handout was distributed that describes the most common reasons for administrative and technical deficiencies. Staff will review this document and recommend ways to minimize the occurrences. In addition, it was suggested that this list be attached to the

application checklist.

The issue of certifying the work of wetland biologists was briefly raised. A new working group consisting of Chris Mason, Sarah Porter, Susan Moberg, DEM staff, and Joe Frisella/ Scott Moorhead will begin to research this topic.

The group was tasked to bring drafts of regulation changes to the next meeting for review and discussion.

The meeting was adjourned at 10:10 AM. The next meeting will be held in Conference A on April 6, 8:30-10:00 at DEM offices.